

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4412 of 1997

AND

SPECIAL CIVIL APPLICATION NO. 4414 OF 1997

KIRIT JOHN MAHIDA

Versus

PREMAL JYOT SOCIETY

Appearance:

MR YATIN SONI for Petitioner

CORAM : MISS JUSTICE R.M.DOSHIT

Date of Order: 14/07/97

ORAL ORDER

Petitioners in both these petitions are aggrieved by the orders of termination of their service. Both the petitioners are serving under respondent No. 1 which is a trust registered under the Bombay Public Trusts Act.

2. Learned advocate Mr. Soni has submitted that a writ petition under Article 226 of the Constitution is maintainable against any person or any institute. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Anadi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Mahotsav Smarak Trust and others versus VR Rudani and others [AIR 1989 SC 1607]. In the matter before the Supreme Court, the Court was considering the claims made by the employees of the affiliated colleges for payment of salary and other benefits which they were deprived of on account of closure of the college. The Court held that the College was performing public duty and the petition under Article 226 of the Constitution was not confined to statutory authorities and instrumentalities of the State alone. The Court held that the mandamus could be issued to any other person or authorities performing public duty. Mr. Soni has also relied upon

annexure "A" to the petition which appears to be the brochure of the centre in which the petitioner was serving. Said brochure discloses philosophy of the centre. Mr. Soni has submitted that these are the objects of the centre. The centre caters to the needs of the people belonging to the backward class and strives for their betterment and development. Thus, the centre performs the governmental functions and the public duty. I am afraid, I cannot accept such argument. The first thing document at annexure A to the petition refers to the philosophy of the centre and it does not indicate that these are the objects of the centre. Further, even if it is assumed that these are the objects of the centre, still, it cannot be said the centre is performing public duty or the governmental functions as is averred by Mr. Soni. He has also relied upon the judgment of the Division Bench of this Court [Coram:Mr. Justice R.A.Mehta and B.J.Shethna] in the matter of Textile Labour Association versus State of Gujarat and others [1995(1) G.L.H.12]. In the said judgment, this court has held that a writ petition can lie against a private party. This Court held that it is not restricted for enforcement of the fundamental rights against the State alone. Article 226 of the Constitution also provides for issuing a writ to any person. A writ under Article 226 of the Constitution for enforcement of fundamental rights can be issued to any person who need not be an authority of the State and it can be a private party. The Court, in that matter, was considering the claim raised by thousands of labourers for their unpaid wages. The Court held that right to receive wages was a fundamental right and for breach of such fundamental right, writ would lie even to a private party. In the present case also, Mr. Soni has argued that the petitioners have a right to life and livelihood under Article 21 of the Constitution. He has also submitted that the impugned action is violative of Article 14 and 46 also. Thus, petition against a trust should be held to be maintainable. I am unable to accept this argument also. In the matter of Textile Labour Association as referred to hereinabove, the Court was considering the claim of thousands of labourers for unpaid wages by for the work which they had already performed. In the present case, it is simply a case of relationship of master and servant. Same cannot be equated with the claim of labourers for unpaid wages. A petition against a trust for enforcement of right of an individual employee cannot be entertained. I am, therefore, of the view that a writ petition against respondent No. 1 is not maintainable. Petitions are, therefore, summarily rejected.

Dt.14.07.1997. [Ms.R.M.Doshit,J.]

Vyas